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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91191309
Party	Defendant ICI Services, LLC
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Attachments	Answer-and-Motion-to-Dismiss.pdf ( 5 pages )(97103 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application No. 77592570

MARK: ICI ICI SERVICES and design

David Aberizk,	)	
	)	
Opposer,	)	
	)	Opposition No. 91191309
v.	)	
	)	
ICI Services Corporation	)	
	)	
Applicant.	)	
	)	

**COMBINED ANSWER  
AND  
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

NOW COMES ICI Services Corporation (“Applicant”), before this honorable board and hereby answers the Opposition to Applicant’s United States Application Serial No. 77/592,570 for the mark ICI ICI SERVICES and design, against which a notice of opposition has been filed by David Aberizk (“Opposer”), as follows:

1. I, David K. Aberizk, owner of Registration Number 3107760, ICI Integrated Consultants, Inc. (published June 20, 2006) am completely and absolutely against the Word Mark request of ICI ICI-Services.

**RESPONSE**

Applicant admits that Opposer appears to be the owner of the cited registration according to the records of the U.S. Patent and Trademark Office (USPTO), but the same USPTO records do not reflect the same publication date or the exact mark as alleged, and on that basis, Applicant

denies the portion of the allegation as to the publication date and the identified mark. Further, Applicant lacks knowledge or information sufficient to form a belief as to the Opposer's state of mind and the truth of the remaining allegation of this paragraph, and on that basis denies the remaining portion of the allegation. Further, Applicant does not comprehend what is meant by "the Word Mark request of ICI ICI-Services", and on that basis denies that aspect of the allegation.

2. It is confusing to our common Government/NAVY client. Both companies hold SEAPORT Enhanced contracts, and regardless of the Goods and Services application claim, ICI Services web site and other listings present engineering as a key business area.

From ICI-Services website:

"Our four Key Business Areas are Engineering, Logistics, Technical Services and Program Management."

Highlighting Engineering (Ship) Design, Test and Evaluation. These are Electrical and Mechanical engineering functions.

From Google:

ICI Services | Home

ICI, LLC- Provides DoD and Federal Government agencies with professional services including naval architecture, marine engineering, mechanical and...

From SBA Profile Highlights:

541330 Engineering Services:

541712 Research and Development in the Physical, Engineering, and Life Sciences

**RESPONSE**

The allegation is argumentative and includes hearsay. To the extent any factual allegations are present and comprehensible by Applicant, Applicant admits that it engages in business with the United States government and that Applicant holds a SEAPORT Enhanced contract. Applicant does not comprehend the remainder of this paragraph, and on that basis denies the remaining allegations of this paragraph.

3. I believe highlighting ICI in any font, or highlighting ICI in any font followed by a name is an infringement.

**RESPONSE**

Denied.

4. And a non highlighted use of ICI in a company name as ICI SERVICES is not.  
ICI SERVICES

**RESPONSE**

This paragraph refers to an admission and is not an allegation that requires a response.

5. I, the undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. [sic] 10001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in this opposition are true; all statements made of my own knowledge are true, and all statements made on information and belief are believed to be true.

**RESPONSE**

This paragraph is not an allegation and therefore requires no response.

**AFFIRMATIVE DEFENSES**

1. Opposer is barred by the doctrine of laches from asserting an opposition to the mark in the subject application.
2. On information and belief, Applicant's commercial use of the ICI term in its mark pre-dates any commercial use by Opposer of the mark in Registration Number 3107760.
3. Applicant reserves the right to assert further affirmative defenses to the allegations of Opposer as may be warranted by discovery in this matter or any amended pleading permitted under the rules.

**MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

In addition to the answer filed with regard to the present Opposition, Applicant respectfully moves the Board to dismiss the present Opposition on the basis that any alleged facts in the Opposition filed by Opposer, even if proved, would not establish that Opposer is entitled to the relief sought. No valid ground for denying the registration sought has been asserted.

Date: Sept. 4, 2009

ICI Services Corporation, **Applicant**

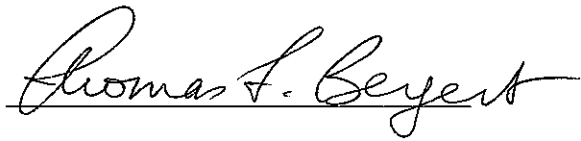
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**CERTIFICATE OF SERVICE**

On September 4, 2009, a true and correct copy of the foregoing **COMBINED ANSWER AND MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM** was duly served by first class mail, postage pre-paid, to Opposer:

David K. Aberizk, P.E., President  
ICI Integrated Consultants, Inc.  
1016 First Street  
Coronado, CA 92118-1335  
daberizk@icpoc.com

A handwritten signature in cursive script, reading "Thomas F. Beyer". The signature is written in black ink and is positioned below the typed name of the person being served.